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5 Counsel for Defendant APPLE GATE

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR 06-173 JCS
11)
Plaintiff,) **MOTION FOR STATUS CONFERENCE**
12)
v.) Date: February 27, 2007
13) Time: 2:00 p.m.
14 APPLE GATE,) Court: The Honorable Joseph C. Spero
15)
Defendant.)

)

16 The parties hereby stipulate and request as follows;

- 17 1. On January 30, 2007, this Court continued sentencing in the aforementioned
matter;
- 18 2. On or about February 6, 2007, defense counsel communicated with Dr. Rosenthal
and indicated that the Court required a report from the treating doctor by February
21 27, 2007. Dr. Rosenthal indicated that she needed to consult with her supervisors
and would return the telephone call;
- 22 3. On or about February 9, Dr. Rosenthal called defense counsel and indicated in a
telephone message that she had consulted with her superiors and she needed a
Court order to write and release the report. This was the first time defense
counsel had heard that Dr. Rosenthal needed a Court order to write and release a

- 1 report;
- 2 4. On February 12, 2007, defense counsel filed a request for a Court Order directing
- 3 Dr. Rosenthal to write and release the report;
- 4 5. On or about February 13, 2007, defense counsel faxed and mailed the Court order
- 5 to Dr. Rosenthal;
- 6 6. On or about February 20, 2007, Dr. Rosenthal called again and indicated that she
- 7 was finished with the report, but that she needed an address to mail the report. At
- 8 that time, she also indicated that she needed Mr. Gate to sign off on the report.
- 9 This was the first time defense counsel had learned of this requirement;
- 10 7. On or about February 20, 2007, undersigned counsel left a message for Mr. Gate
- 11 to call his treating physician, and reminding him of the sentencing on February 27,
- 12 2007. Mr. Gate responded the same day, and said it was the first time that he had
- 13 heard of the sentencing, and that he could not arrange travel to come to San
- 14 Francisco February 27, 2007;
- 15 8. Because defense counsel has been in trial, she cannot remember what day and
- 16 time she initially called Mr. Gate regarding the new sentencing date. As such,
- 17 defense counsel assumes responsibility for not letting Mr. Gate know about his
- 18 new sentencing date three weeks in advance;;
- 19 9. USPO Sara Black called Dr. Rosenthal today, February 26, 2007. According to
- 20 USPO Black, Dr. Rosenthal is faxing the report to San Francisco today;
- 21 10. When defense counsel called AUSA Tracie Brown about this stipulation, she
- 22 learned that Ms. Brown received a call from counsel at the VA Clinic that the
- 23 report was mailed to a "Ms. Portman" last week to the attention of the Office of
- 24 the Federal Defender. To date, defense counsel has not received the report;
- 25 11. The parties thus stipulate and jointly request that tomorrow's court appearance,
- 26 February 27, 2007, be treated as a status conference; that the Court waive Mr.

1 Gate's appearance, and that the parties discuss the report prepared by Ms.
2 Rosenthal and determine whether or not the Rosenthal report provides the Court
3 with adequate information for the Court to meaningfully exercise its sentencing
4 authority prior to Mr. Gate's travel to San Francisco.

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6 Dated: February 26, 2007

7 _____/s/
8 ELIZABETH M. FALK
9 ASSISTANT FEDERAL PUBLIC DEFENDER

10 Dated: February 26, 2007

11 _____/s/
12 TRACIE L. BROWN
13 ASSISTANT UNITED STATES ATTORNEY

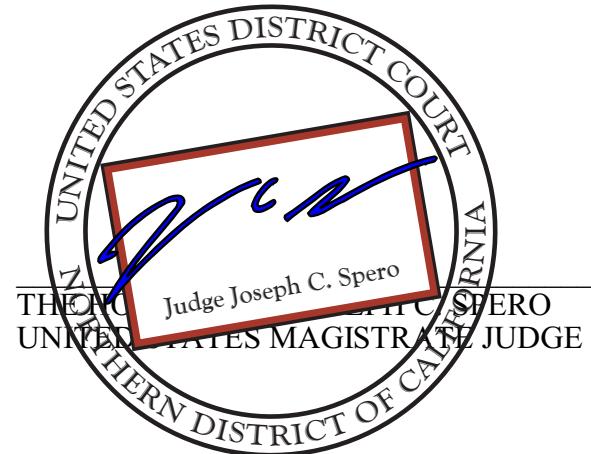
14 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
15 "conformed" signature (/S/) within this e-filed document.

16 [PROPOSED] ORDER

17 For the reasons stated herein, the parties are hereby ordered to appear for a Status
18 Conference on Tuesday, February 27, 2007 at 2:00 p.m. Mr. Gate's appearance at the status
19 conference is waived.

20 IT IS SO ORDERED

21 Dated: February 27, 2007



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